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**From:**

**Sent:** Wednesday, August 03, 2011 3:27:23 PM

**To:**

**Cc:**

**Subject:** FW: 404k deduction

I apologize for not getting back to you sooner. I finally read CC 2004-38 again and I think that we should disallow the claim. Even though it is in the 9th Circuit, Service position is that Boise is incorrect and the cases we won in the 3rd and 8th Circuits support that view. I would also like to include and in the discussion; therefore, I am copying them so that they can weigh in. I don't know if they agree with me. Thanks.